

**Subcommittee to Examine the Implementation in Hong Kong of Resolutions
of the United Nations Security Council in relation to Sanctions**

Fourth meeting on 12 July 2005

List of issues which require follow-up action/consideration

1. Given that the current arrangement for implementing resolutions adopted by the United Nations Security Council (UNSC) in relation to sanctions are far from satisfactory, the Administration's attention has been drawn to the need to improve the existing system by exploring alternative approaches to implement UNSC sanctions in a more expeditious manner and with the involvement of the Legislative Council (LegCo) in the legislative process. At the last meeting held on 12 May 2005, the Administration was urged to consider the following preliminary suggestions by members :

- (a) to consider incorporating into the primary legislation (i.e. United Nations Sanctions Ordinance (UNSO) (Cap. 537)) all the provisions on enforcement powers and other key provisions which generally applied to all UN sanctions; and to set out in a Schedule to UNSO the targets and subjects of sanctions which may differ on each occasion; and
- (b) to make reference to the arrangements for Hong Kong to enter into bilateral agreement with other countries as currently provided in the Mutual Legal Assistance on Criminal Matters Ordinance (Cap. 525) (MLACMO) and the Fugitive Offenders Ordinance (Cap. 503) (FOO), in which LegCo has a role in scrutinizing the Orders made under the Ordinances.

The Administration has been requested to confirm in writing whether it will pursue the aforesaid suggestions or other alternative approaches to improve the current arrangement. If not, the Administration should provide a detailed explanation/analysis on why the alternative approaches are considered not viable or effective and why maintaining the current arrangement is considered the most appropriate option.

2. Members are gravely concerned about the current arrangement in which sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap.1) do not apply to Regulations made under section 3 of UNSO, in particular the constitutional problem which may arise from placing the legislative power in the hands of the executive under such an arrangement. They also note from the paper prepared by the legal adviser (Annex II to LC Paper No. LS89/04-05) that of the four sampled Ordinances implementing international obligations i.e. UNSO, FOO, MLACMO and United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), UNSO is unique in excluding LegCo altogether from

vetting and amending the subsidiary legislation made under the principal ordinance. They are also aware that Committee Stage Amendments had been introduced to the other three bills to provide/strengthen LegCo's role in scrutinizing the subsidiary legislation made under the principal ordinance. In this connection, the Administration has been requested to provide an explanation on why the UNSO has deviated from the usual practice adopted in ordinances which implement international obligations.

3. The Chairman is gravely concerned about the Administration's conclusion (paragraphs 23 and 24 of LC Paper No. CB(1)1934/04-05(01)) that the current arrangement under UNSO is consistent with the Basic Law and should be maintained. She remarks that if the Administration is firmly against taking any action to improve the current arrangement but insists on its continuation on the grounds that the arrangement is constitutional, then, she would invite members of the Subcommittee to consider the option of challenging the Government on the point of constitutionality by taking the issue to court. The Administration is requested to give further consideration to the need to improve the current arrangement having regard to members' concerns about LegCo being deprived of its role in vetting or amending the Regulations made under section 3 of UNSO. Pending the Administration's further response, the Chairman has asked the Legal Service Division of the LegCo Secretariat to explore the relevant legal procedures as well as possible impediments if the issue is to be resolved by the judicial channel.

4. The Clerk to the Subcommittee will liaise with the Administration in early September 2005 on the availability of its written response on paragraphs 1 and 2 above; and consult the Chairman and members on the arrangements for the next meeting.

Council Business Division 1
Legislative Council Secretariat
1 August 2005